

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 22, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:05KD-182

Kauai

Grant of Term, Non-exclusive Easement to Shawna Carol and Thomas Cobb for Access and Fence Line Purposes; Rescind Prior Board Action of May 26, 2006 (Item D-1), Sale of Remnant to Shawna Carol and Thomas Cobb, Kapaa, Kawaihau, Kauai, Tax Map Key:(4) 4-6-08: Portion 30.

APPLICANT:

Shawna Carol and Thomas Cobb, Husband and Wife, Tenants by the Entirety, whose mailing address is 6538 Kahuna Road, Kapaa, Hawaii, 96746.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government Lands of Kapaa situated at Kapaa, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-6-08: Portion 30, as shown on the attached map labeled Exhibit A.

AREA:

0.195 Acre, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way and fence line over and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, states "Operations, repairs or maintenance of existing structures, facilities, involving negligible or no expansion or change of use beyond that previously existed."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The Board approved at its May 26, 2006 meeting, under agenda (Item D-1), authorized the sale of remnant to Shawna Carol and Thomas Cobb. The Board further amended staffs' recommendation by authorizing the issuance of a management right-of-entry. The Cobb's purchased

Parcel 27 in October 2004. Through a survey of their property, it as determined that the access to their property and a portion of the existing fence line encroached on to the State abandoned irrigation ditch right-of-way. Through discussions with the Applicant's Attorney, Mr. Steve Lee, it was determined the purchase of the State abandoned irrigation ditch right-of-way would be in the interest of everyone.

Through research of this abandon irrigation ditch right-of-way the State of Hawaii back in the 1960s subdivided and sold portions of the ditch to abutting private lot owners.

Since the Boards approval in May 2006, Shawna Carol and Thomas Cobb have changed their position on purchasing the remnant and have requested a term, non-exclusive easement for access and fence line purposes.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The following agencies were solicited for comments:

County of Kauai:

Planning Department, Public Works and Department of Water:
No Comments were received.

State of Hawaii:

Historic Preservation, Department of Health, Office Of
Conservation and Coastal Lands, Water Resource Management,
Office of Hawaiian Affairs and East Kauai Water User
Cooperative: No comments were received.

Department of Health: We have reviewed the subject proposal
submitted and have no comments to offer.

Since the sale of a remnant is no longer under consideration, staff is recommending a \$500 fine for the unauthorized use (fence line) of State lands. Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a \$500 fine is reasonable since the encroachment is over 100 square feet.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of May 26, 2006, under agenda Item D-1.
2. Impose a \$500 fine for illegal encroachment, under Section 171-6(12), HRS.

3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-6-08:27, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Shawna Carol and Thomas Cobb covering the subject area for access and fence line purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 4-6-08:27, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



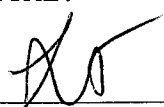
Tommy Oi
Kauai District Land Agent

BLNR - Issuance of Easement
to Shawna Carol
and Thomas Cobb

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APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson


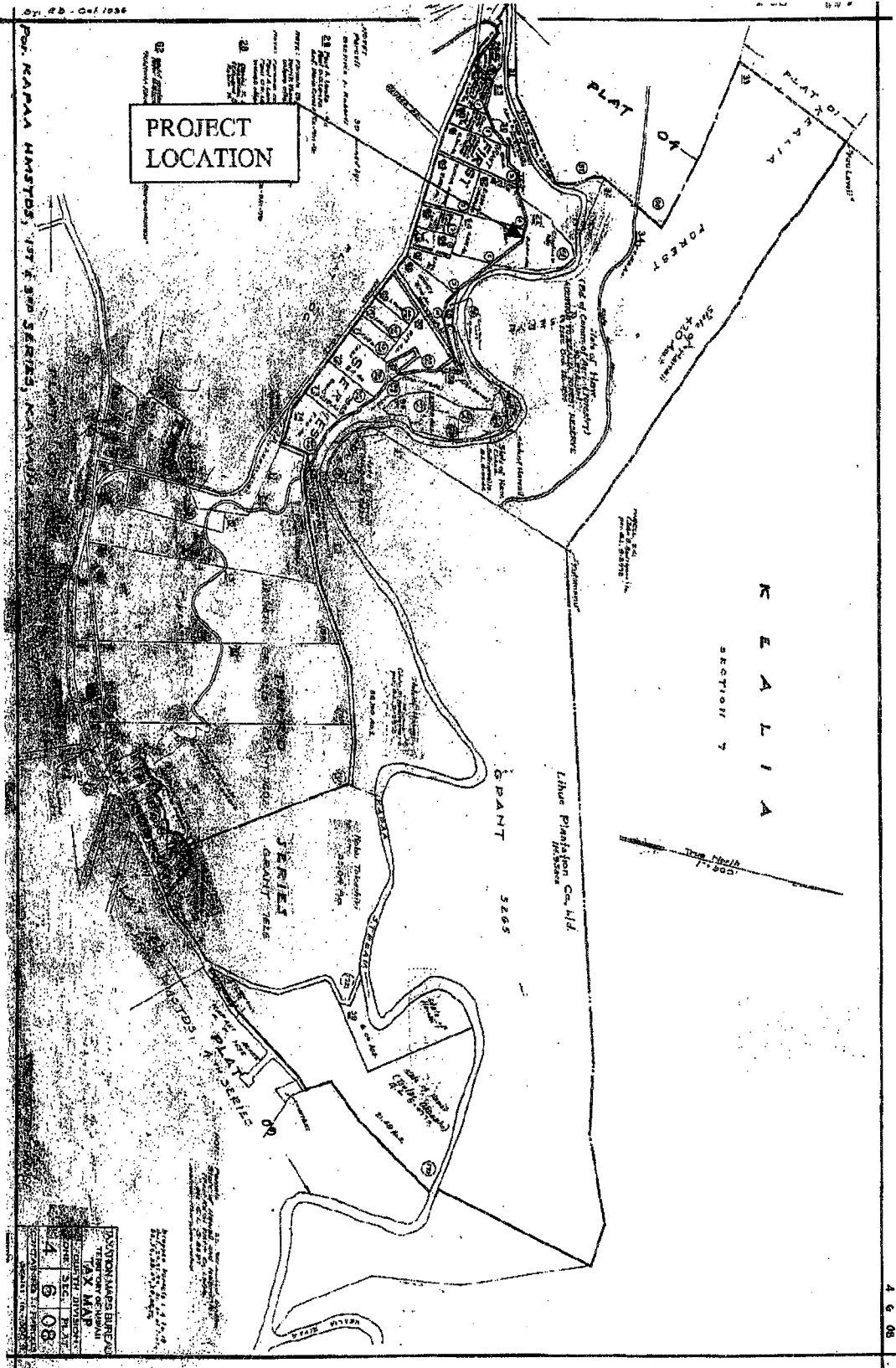


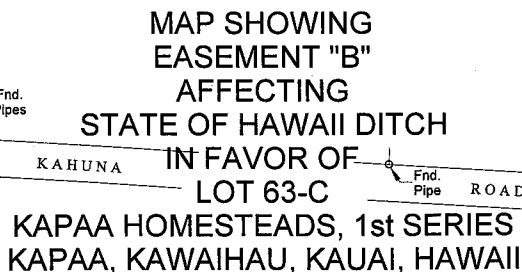
EXHIBIT A



1. Coordinates based on Government Survey Triangulation Station "NONOU".
2. Easement "B" affecting State of Hawaii Ditch in favor of Lot 63-C for access. Utility and fence purposes. (0.195 Acre)

0 50 100 200

GRAPHIC SCALE IN FEET



Tax Map Key: (4) 4 - 6 - 008: 030, (Por.)
(Owners: State of Hawaii)

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